UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

In the Matter of

MECHANICAL AND ELECTRICAL CONTRACTORS, INC.

Employer

and Case 5-RC-15283

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 24, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein call the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. Mechanical and Electrical Contractors, Inc. (hereinafter "the Employer"), a Maryland corporation with an office and place of business in Baltimore, Maryland, is a construction industry employer engaged in the business of mechanical and electrical contracting in the Baltimore metropolitan area. During the part 12 months, a representative period, the Employer purchased and received products, goods and materials valued in excess of $50,000 directly from points located outside the State of

Maryland. The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of the Act.

The International Brotherhood of Electrical Workers, Local 24, AFL-CIO (hereinafter "the Petitioner" or "the Union") filed a petition seeking to represent a unit of all electrical working foremen, electricians, electrical apprentices and electrical helpers, excluding all other employees, guards and supervisors as defined in the Act. The Petitioner asserts that there are approximately 13 employees in the petitioned-for unit. The Employer contends that the petitioned-for unit is not appropriate; it asserts that an appropriate unit must include all of its mechanical and electrical employees. There are approximately 35-40 electrical and mechanical employees in the Employer's proposed unit.

The parties stipulated, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act. There is no history of collective bargaining between the parties.

The parties stipulated that Dave Metz (hereinafter "D. Metz") and Richard Hutson have the authority to hire, fire, promote and demote employees and therefore are supervisors as defined by Section 2(11) of the Act. Based on the parties' stipulation and the record as a whole, D. Metz and Richard Hutson are excluded from the unit found appropriate herein.

At the hearing, the parties stipulated that the individuals engaged in an unfair labor practice strike should be permitted to vote subject to challenge.

The Employer presented as its witness part-owner Richard Hutson. The Petitioner presented as its witnesses electrician apprentice Major Leight and electrical working foreman Charles Nealis.

ISSUES

1. Whether the petitioned-for unit is an appropriate unit, or whether the unit must include all of the Employer's electrical and mechanical employees;
2. Whether the working foremen are supervisors within the meaning of the Act;
3. Whether certain employees who were hired after the commencement of an alleged unfair labor practice strike should be permitted to vote; and
4. Whether Robert Metz and Russell Metz share a community of interest with the employees in the unit found appropriate, and whether James Metz is eligible to vote in the election.

POSITIONS OF THE PARTIES

The Petitioner contends that the petitioned-for unit is a traditional craft unit of electricians, including journeymen, apprentices, helpers and working foremen. The Petitioner asserts that there is little, if any, interchange or responsibility across mechanical and electrical craft lines for employees with higher skill level, and that there is only interchange among helpers or lower skill level employees. The Petitioner asserts

that Scott Grout, Steve Miceli and certain working foremen are supervisors within the meaning of Section 2(11) of the Act. The Petitioner contends that some of the working foremen perform very little bargaining unit work; spend more than 80 percent of their time supervising the work of others; have the ability to pledge the credit of the Employer; grant time off; issue minor reprimands; and evaluate the performance of other employees. In addition, the Petitioner argues that Robert Metz and Russell Metz should not be included in the petitioned-for unit as they do not share a community of interest with employees in the proposed unit and James Metz has not worked sufficient hours to be considered a regular part-time employee.[1]

The Employer contends that there is substantial evidence of interchange, interaction, commonality of work rules, benefits and supervision among all of the Employer's employees such that a grouping of electricians is not an appropriate unit. The Employer asserts that there is insufficient evidence that the working foremen are supervisors, with the possible exception of Charles Nealis. The Employer contends the unit must include all electrical and mechanical employees.

For the reasons set forth below, I find that the petitioned-for unit is not appropriate and that the appropriate unit must include all of the Employer's electrical and mechanical employees. I further find that superintendent/working foreman Scott Grout and superintendent/project manager Steve Miceli do not share such a close community of interest with the unit employees that they must be included in the unit.

THE EMPLOYER'S OPERATIONS/UNIT SCOPE

The Employer is a mechanical and electrical contractor. When hired, employees are informed that they will be expected to perform both mechanical and electrical work, including plumbing, sheet metal, HVAC, rigging, concrete work, installation of conduit, pulling cable and building rack systems. Approximately 80 percent of the Employer's projects involve both electrical and mechanical employees working together. Part-owner Hutson testified that on a recent project, the entire field labor force assisted with digging trenches, running conduit and building racks, without regard for any of the employees' job classifications.

Even though the Employer maintains separate electrical and mechanical departments, due to the nature of the Employer's business, the electrical and mechanical departments of the business work together as a team. When bidding on a project, the Employer provides estimates for the electrical work, the mechanical work, and a combination of the two. For this reason, the Employer offers a discount on the combination of the electrical and mechanical work because the same employees are used across craft lines to perform the job. Hutson testified as to various specific instances in which employees performed both electrical and mechanical work on job sites; this testimony was unrebutted. Although employees are asked to note whether they are

[1] At the hearing, the Petitioner initially asserted that it may contest the eligibility of certain relatives of part-owner D. Metz. During the hearing, the Petitioner indicated that it no longer contended that Robert Metz, Russell Metz or James Metz should be ineligible to vote based on their familial relationship with D. Metz.

performing electrical or mechanical tasks on their time sheet each day, not all employees specifically distinguish their hourly times and tasks. There is no change in the pay rate for employees who perform both electrical and mechanical work during the workday. If an employee is a journeyman electrician and performs work as a mechanical helper, the employee is paid at the rate of a journeyman electrician.[2]

Hutson testified that he and D. Metz spend time both in the office and in the field. In order to monitor the work in the field, the Employer utilizes a phone system. Approximately 20 electrical and mechanical field employees are equipped with phones so that Hutson or D. Metz can contact them and oversee the work in the field without being physically present. The Employer also utilizes working foremen and superintendents to communicate instructions to employees and oversee the work on various job sites.

All of the Employer's field employees, both electrical and mechanical, are hourly paid. The wages for electrical and mechanical employees are comparable and depend on the employee's level of skill. Hutson testified that electrical employees are classified as E1 (journeyman and/or master electrician), E2 (electrician apprentice), and E3 (electrician helper); mechanical employees are classified as P1 (journeyman plumber), P2 (plumber apprentice) or P3 (plumber helper). Employees classified as apprentices may not have attended a school-sponsored program but have some years of experience in the trade. Union witness Leight testified that he is currently enrolled in school and training to become a journeyman electrician. Employees classified as helpers are generally performing unskilled work. Hutson testified that two employees applied for but were not accepted into apprenticeship programs. Neither employee had electrical experience when hired; one performed more mechanical helper work, and the other performed plumbing helper, electrical helper and sheet metal helper work.

Work hours for all employees, whether mechanical or electrical, are from 7:00 a.m. to 3:30 p.m. All employees take a morning break at 9:00 a.m. and a lunch break at 12:00 p.m. Employees who will be late to or absent from work are instructed to call the Employer's office. If an employee on a job site needs to leave early for an emergency situation, the working foreman contacts Hutson or D. Metz to inform them. Hutson testified that none of the working foremen has ever denied an employee's request to leave in an emergency situation. The Employer offers the same health and dental plan to all electrical and mechanical employees. All employees are subject to the same work rules and drug testing policy. Employees report directly to the job site; there is no separate parking area for electrical and mechanical employees. Employees have been provided with identical t-shirts, hats and sweatshirts and are expected to wear these items to work.

There are three employees who primarily perform service work and work on different job sites as well. These employees have company service vehicles that have a variety of different materials. Jim Swindell performs HVAC, mechanical and electrical service work. Swindell is a licensed HVAC technician and does not hold a journeyman

[2] This same scenario is true if an employee is a journeyman plumber and performs work as an electrical helper.

electrician license.[3] Jeff Newlon is a plumber/electrician and HVAC helper. Newlon sometimes takes an electrician with him on a service call in order to work more efficiently. William Keitz is a master electrician who has also performed work as a plumbing helper.

Employees are expected to provide general hand tools while the Employer provides power tools. Plumbers usually carry cutting tools, wrenches, tape measures butanes, adjustable wrenches, pliers, channel locks, screwdrivers and saws. Electricians generally carry screwdrivers, pliers, voltage testers, tape measures and adjustable wrenches.

Section 9(b) of the Act states the Board "shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof…." The statute does not require that a unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit. Rather, the Act only requires that the unit be "appropriate." *Overnite Transportation Co.,* 322 NLRB 723 (1996); *Parsons Investment Co.,* 152 NLRB 192, fn. 1; *Morand Bros. Beverage Co.,* 91 NLRB 409 (1950), enf'd. 190 F.2d 576 (7th Cir. 1951). A union is, therefore, not required to seek representation in the most comprehensive grouping of employees unless "an appropriate unit compatible with that requested does not exist." *P. Ballantine & Sons*, 141 NLRB 1103 (1963); *Bamberger's Paramus*, 151 NLRB 748, 751 (1965); *Purity Food Stores, Inc.*, 160 NLRB 651 (1966). It is well settled that there is more than one way in which employees of a given employer may appropriately be grouped for purposes of collective bargaining. *General Instrument Corp. v. NLRB,*319 F.2d 420, 422-3 (4th Cir. 1962), cert. denied 375 U.S. 966 (1964); *Mountain Telephone Co. v. NLRB*, 310 F. 2d 478, 480 (10th Cir. 1962).

In determining the community of interest of employees in a unit, the Board will consider skills, duties, working conditions, the Employer's organization, supervision, and bargaining history, but no one factor has controlling weight. *Airco, Inc.,* 273 NLRB 348 (1984); *E.H. Koester Bakery Co.,* 136 NLRB 1006, 1009-11 (1962); *Kalamazoo Paper Box Corp.,* 136 NLRB 136-38 (1962). The Board has long held that units in the construction industry may be appropriate on the basis of either a craft unit…or departmental unit; or so long as the requested employees are a clearly identifiable and homogeneous group with a community of interest separate and apart from other employees. *Brown & Root Braun*, 310 NLRB 632, 635 (1993); *Dick Kelchner Excavating Co*., 236 NLRB 1414 (1978); *Del Mont Construction Co*., 150 NLRB 85 (1964).

In *Boudreaux's Drywall, Inc.*, 308 NLRB 777 (1992), the Board denied a request for review of an Acting Regional Director's decision finding a petitioned-for unit of carpenters, carpenter apprentices, carpenter helpers, and carpenter foremen not appropriate. In finding that the petitioned-for unit must also include jobsite laborers, the Acting Regional Director noted in particular the absence of a formal apprentice program

[3] Swindell is currently enrolled in an electrical apprenticeship program.

or requirement, job progression, common functions and common supervision. *Id.* at 779. Similarly, in *Longcrier Co.,* 277 NLRB 570 (1985), the Board held that while it has long recognized that in the construction industry units may be appropriate on the basis of a craft, or because they comprise a clearly identifiable and functionally distinct group of employees, the petitioned-for employees (employees who spent a majority of their time operating construction equipment) met neither of these tests. Noting the common supervision by the project superintendents, as well as the overlapping duties and the functional integration of work performed by the petitioned-for employees with that of the remaining employees, the Board found that the evidence failed to establish that the requested unit was either a craft unit or a functionally distinct group of employees with interests sufficiently separate from those of the employer's other employees on each project to warrant granting them a separate unit.

In asserting that a unit of electricians is appropriate, the Petitioner argues that there is little, if any, interchange among employees at higher skill levels, and when there has been interchange, it was in limited circumstances and for limited hours. The record reflects that several employees perform work on both the electrical and mechanical side of the Employer's business. The record reveals that all electrical and mechanical employees have the same work hours, break and lunch times, benefits, and work rules; receive comparable wages; and are commonly supervised. Electrical and mechanical employees work together on the job site, regardless of classification, to complete a project.

Based on the foregoing and the record as a whole, I find that the evidence fails to establish that the petitioned-for unit is either a craft unit or a functionally distinct group of employees whose interests are sufficiently separate from those of the Employer's other employees to warrant a separate unit. The record evidence reveals that the Employer's business is not divided along traditional craft lines. There is no evidence in the record that the Employer requires its employees to be registered in or to have completed an apprenticeship program to secure or maintain employment. There is also no evidence that the Employer has a formal apprenticeship program. The electrical and mechanical employees work together in a highly integrated operation, under common supervision, frequently performing similar tasks in order to complete a project. For these reasons, I find that electrical and mechanical employees constitute an appropriate unit. *Brown & Root Braun*, 310 NLRB 632 (1993).

SUPERVISORY ISSUES

The Employer employs approximately seven working foremen[4] who are responsible for laying out the job, determining what labor is needed for a project, and directing the work of employees based on their specialized knowledge. Hutson testified that when the Employer secures a job, the working foreman assigned to the project reviews the plans, specifications, and needed materials with Hutson or D. Metz. Based

[4] Based on the record testimony, it appears that five of the working foremen are electricians and two are plumbers.

upon that discussion, Hutson testified that he or D. Metz assign employees to the project. Hutson testified that working foreman James Rogers was responsible for evaluating and implementing a recent job in Gaithersburg, Maryland based on Hutson's instructions. Hutson would ask Rogers if he needed helpers and would provide them based on Rogers' response. Hutson testified that working foremen Carroll Talbott and Jack Berger have the same level of responsibility and authority as Rogers. Employees are responsible for completing their time sheets during the week. The working foreman on each job is responsible for completing a master time sheet at the end of each week, reflecting the work performed by each employee.

If there is a problem with an employee on the job site, the working foreman calls the office and speaks to D. Metz or Hutson. Working foremen are hourly paid, receive the same benefits as other electrical and mechanical employees, and do not wear any special uniforms. Hutson testified that working foremen do not hire, fire, discipline, evaluate or effectively recommend these actions. Disciplinary letters issued to employees are signed by Hutson or D. Metz. Working foremen are responsible for and have the authority to order materials and to pledge the credit of the Employer.

Union witness Leight, who is an electrician apprentice, testified that he worked with working foreman Talbott on one project and, based on his observation, Talbott worked in a trailer, did not work with his tools, informed employees of their job assignments, and observed employees to make sure they were performing their tasks. On cross-examination, Leight admitted that he was assigned on that project to perform sheet metal work and did not work directly with Talbott. Leight also testified that when he was assigned to work on a project with working foreman Ted Brown, he never saw Brown working with his tools. Leight testified that he observed Brown telling certain plumbers that there was work to be done and they should not be talking too much. Leight testified that working foremen Mike Newlon and Rogers worked with their tools. He further testified that Rogers directed the work of employees, as did Brown and Talbott when they were working foremen. Leight served as a working foreman on different Ciena jobs and had one or two employees working with him once on a lab job. Leight testified that it was his responsibility to instruct employees on how to get started on the job in the morning. This is the same responsibility that Rogers and Nealis had when serving as working foremen.

Working foreman Nealis testified that in directing the work of employees, he tells them what needs to be done and answers their questions. In directing the work, Nealis testified that he may have suggested a different way to perform a task to an employee or told an employee to make the task a little more neat, and that employees usually listened to him. When determining who to assign to a particular task, Nealis made his decision based on the difficulty of the task and the experience of the employee. Nealis testified that on some occasions, Hutson may instruct him on who should perform which task, but for the most part Nealis could make the determination on his own. In determining the skill level of an employee when assigning work, Nealis used his observation of the employee's work. Nealis has very little input in deciding which employees will work with him. Nealis testified that superintendent/working foreman Scott Grout directed his work as a foreman, and if he had a problem with something on the job site, he would

address his question to Grout. If an employee was late to the job site, Nealis would call the office and speak to either Grout or Hutson. Nealis never issued a reprimand and was never asked to do so by anyone directing his work. When serving as a working foreman, Nealis testified that he was never asked to evaluate an employee, although D. Metz and Hutson once asked him about an employee's attitude.

In addition to the working foremen, there are two superintendents – Scott Grout and Steve Miceli. Hutson testified that superintendent/working foreman Grout spends approximately 60 percent of his time working in the office and 40 percent of his time in the field. When working in the office, Grout handles service calls, performs tasks assigned by Hutson, performs estimates, gathers material, and goes to job sites at Hutson's direction. Hutson testified that Grout's signature appears on invoices to verify that work has been completed. The record evidence reveals that of 11 invoices signed by Grout in a two month period, two invoices reflect Grout performing one hour of work on each job. One of the 2 invoices notes Grout's position as superintendent. Union witness Leight testified that he would contact Hutson or Grout if issues arose on the job site, if materials were needed, if an employee was sick, or if there were weather conditions that prevented employees from continuing to work. Leight further testified that when he acted as a working foreman, he was appointed to the position by Hutson or Grout.

Superintendent/project manager Miceli has an office, where he spends most of his time. While working in the office, Miceli reviews change orders to ensure they are complete before they are forwarded to D. Metz and performs some estimating work. Hutson testified that Miceli does not have the authority to hire, although he has been present for interviews because they have taken place in his office. Miceli has not offered an opinion regarding hiring and has not recommended an individual for hire. When working in the field, Miceli lays out plumbing fixtures and prepares the site for employees.

Hutson testified that Grout and Miceli do not hire, fire, discipline, assign work, evaluate, or effectively recommend any of these actions for employees. They are hourly paid, receive the same benefits as field employees, and do not wear any special uniforms. Hutson testified that Grout currently is serving as a working foreman because there was an insufficient workload for him to serve as a superintendent. Grout and Miceli review change orders to price out material on a job, check the scope of work to be done, or to determine what material was used on the job and the hours logged by employees. Final approval for a change order is done by D. Metz or Hutson. Working foreman Nealis testified that when Grout first began working for the Employer, he did see him working with tools on occasion. Grout has delivered material to Nealis on a job site and on occasion has reviewed information, but Grout has not remained on the job site. Nealis further testified that when he sees Miceli on a job site, he is directing employees, but not working with tools.

Section 2(11) of the Act, 29 U.S.C. Section 152, provides:

> The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall,

> promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Section 2(11) is to be read in the disjunctive; the possession of any one of the authorities listed is sufficient to place an individual invested with this authority in the supervisory class. *Mississippi Power Co.*, 328 NLRB 965, 969 (1999), citing *Ohio Power v. NLRB*, 176 F.2d 385, 387 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949). Applying Section 2(11) to the duties and responsibilities of any given person requires the Board to determine whether the person in question possesses any of the authorities listed in Section 2(11), uses independent judgment in conjunction with those authorities, and does so in the interest of management and not in a routine manner. *Hydro Conduit Corp.*, 254 NLRB 433, 437 (1981). Thus, the exercise of a Section 2(11) authority in a merely routine, clerical, or perfunctory manner does not confer supervisory status. *Chicago Metallic Corp.*, 273 NLRB 1677 (1985). As pointed-out in *Westinghouse Electric Corp. v. NLRB*, 424 F.2d 1151, 1158 (7th Cir. 1970), cited in *Hydro Conduit Corp.*: "the Board has a duty to employees to be alert not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied employee rights which the Act is intended to protect." See also *Quadrex Environmental Co.*, 308 NLRB 101, 102 (1992). In this regard, employees who are mere conduits for relaying information between management and other employees are not statutory supervisors. *Bowne of Houston*, 280 NLRB 1222, 1224 (1986).

The party seeking to exclude an individual from voting for a collective-bargaining representative has the burden of establishing that the individual is ineligible to vote. *Kentucky River Community Care, Inc.*, 523 U.S. __ (2001). Conclusory evidence, "without specific explanation that the [disputed person or classification] in fact exercised independent judgment," does not establish supervisory authority. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991). Similarly, it is an individual's duties and responsibilities that determine his or her status as a supervisor under the Act, not his or her job title. *New Fern Restorium Co.*, 175 NLRB 871 (1969).

I find that the Union has not met its burden of establishing that the working foremen are supervisors, and therefore, conclude that they should be included in the unit found appropriate. The working foremen do not hire, fire, discipline or evaluate employees. The working foremen provide routine direction to and assign field employees based on their experience and instructions from Hutson and/or D. Metz. I find that the duties of and the degree of judgment exercised by the working foremen fall below the threshold required to establish statutory supervisory authority. *Dynamic Science, Inc.*, 334 NLRB No. 57 (2001); *Chevron Shipping Co.*, 317 NLRB 379 (1995).

I further find that superintendent/working foreman Grout and superintendent/project manager Miceli should be excluded from the unit found appropriate. Although the Petitioner has not carried its burden in asserting the supervisory status of Grout and Miceli, the Petitioner did not petition for the superintendents and the record evidence reveals that they

do not share a community of interest with the employees in the unit found appropriate. The documentary evidence and the testimony of the Employer's witness establish that superintendents Grout and Miceli spend most of their time working in the office performing estimates and other tasks, which are different types of tasks than those performed by other electrical and mechanical employees, and are performed under different working conditions -- in an office, working on paper work, rather than on hands-on construction work on site.[5] Accordingly, Grout and Miceli are excluded from the unit found appropriate herein.

ELIGIBILIY OF CERTAIN EMPLOYEES

The Petitioner asserts that Robert Metz and Russell Metz should be excluded from the unit because they do not share a community of interest with other bargaining unit employees. The Petitioner further asserts that James Metz has only worked 16 hours since May and should be excluded from the unit as he is not a regular part-time employee. In addition, the Petitioner contends that William Keitz, Steve Reba and Ken Kadlec should not be eligible to vote as they were hired as replacement employees following an unfair labor practice strike.

ROBERT METZ, RUSSELL METZ AND JAMES METZ

Robert Metz, the father of D. Metz, performs tasks as an electrical or plumbing helper, picks up and delivers materials to various work sites, and works with concrete, drywall and reinforcement rods. Robert Metz also works with tools and equipment, and ensures that they are in useable condition. Russell Metz, a cousin of D. Metz, works as a plumbing and electrical helper. James Metz, D. Metz's uncle, performs carpentry work, pours concrete, works on tools to ensure they are working properly, works as a general laborer, and moves material. The Employer asserts that James Metz has worked only 16 hours since June 2001 due to eye surgery and is essentially on a medical leave of absence.

Robert Metz, Russell Metz and James Metz have the same benefits and work rules as other employees. The record evidence reveals that Robert and Russell Metz work as plumbing or electrical helpers and make deliveries to job sites. I find that Robert Metz and Russell Metz share a sufficient community of interest with the electrical and mechanical employees to warrant their inclusion in the unit found appropriate.

James Metz works as a general laborer, among other tasks. The general rule regarding an employee on sick leave is that they are presumed to remain in that status until recovery, and a party seeking to overcome that presumption must make an affirmative showing that the employee has resigned or been discharged. *Edward Waters College,* 307 NLRB 1321 (1992); *Red Arrow Freight Lines*, 278 NLRB 965 (1986); *Sylvania Electric Products*, 119 NLRB 824 (1957). Recently, in a series of cases, a divided Board reaffirmed the general rule. *Super Valu, Inc.,* 328 NLRB (1999); *Pepsi-*

[5] Although the evidence is insufficient to establish their supervisory and/or managerial status, the superintendents are not relegated to non-representation even assuming they are statutory employees as the two of them could constitute a separate unit.

Cola Co., 315 NLRB 1322 (1995); *Associated Constructors*, 315 NLRB 1255 (1995). I find that there is no evidence that James Metz has resigned or been discharged. Accordingly, I find that James Metz should be included in the unit found appropriate.

WILLIAM KEITZ, STEVE REBA AND KEN KADLEC

The Petitioner further contends that employees William Keitz, Steve Reba and Ken Kadlec are not eligible voters because they were hired as replacement employees for certain unfair labor practice strikers.[6] The Employer contends that Keitz was scheduled to begin working for the Employer on or about August 10, 2001, but did not begin working for the Employer until late-August. The Employer contends that Keitz was hired as a full-time employee and was informed that he was a permanent employee. Steve Reba met with the Employer in July 2001 and was offered a job as a full-time employee. Reba gave his employer two weeks' notice and began working as a full-time electrician with the Employer. Hutson testified that he informed Reba that he was and would remain a full-time, permanent employee. Ken Kadlec began working for the Employer as a full-time employee in September 2001. Hutson testified that he has informed Kadlec that he is a permanent employee.

Issues as to voting eligibility of strikers and replacements are normally deferred until after the election for disposition by way of challenges. *Bright Foods,* 126 NLRB 553 (1960); *Pipe Machinery Co*., 76 NLRB 247 (1948). Accordingly, I shall permit William Keitz, Steve Reba and Ken Kadlec to vote subject to challenge.

ELIGIBIITY FORMULA

The Board held in *Steiny & Company, Inc.*, 308 NLRB 1323 (1992), that the *Daniel* formula is applicable in all construction industry elections, unless the parties stipulate to the contrary. See also *Signet Testing Laboratories*, 330 NLRB No. 104 (1999). Here, the Employer's unit employees are engaged in the construction industry, and the parties did not stipulate that the *Daniel/Steiny* formula should not be applied. Accordingly, I find that the *Daniel/Steiny* formula, as set forth below, is the appropriate eligibility formula to be applied in this case.

The *Daniel/Steiny* formula to determine eligibility of employees in the construction industry provides that, in addition to those eligible to vote under the traditional standards, laid-off unit employees are eligible to vote in an election if they were employed by the Employer for 30 working days or more within the 12 months preceding the eligibility date for the election, or if they have had some employment by the Employer in those 12 months and have been employed for 45 working days or more within the 24-month period immediately preceding the eligibility date. Of those eligible under this formula, any employees who quit voluntarily or had been terminated for cause prior to the completion of the last job for which they were employed are excluded and disqualified as eligible voters. *Daniel Construction Co.*, 133 NLRB 264, 267 (1961),

[6] Certain of the Employer's employees engaged in a strike between August 17, 2001 and September 14, 2001.

modified 167 NLRB 1078 (1967), reaffirmed and further modified in *Steiny & Company, Inc.*, 308 NLRB 1323 (1992), overruling *S.K. Whitty & Co.*, 304 NLRB 776 (1991).

CONCLUSION AS TO THE UNIT

Based on the foregoing, the record as a whole, and careful consideration of the arguments of the parties at hearing and in brief, I find the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining:

> All full-time and regular part-time electrical and mechanical employees employed by the Employer at its Baltimore, Maryland location, but excluding all office employees, superintendents, guards, and supervisors as defined by the Act.

At the hearing, the Union stated its willingness to proceed to an election in any unit found appropriate. Since the unit that I find appropriate is broader than the petitioned-for unit, the Union is granted fourteen (14) days from the date of this Decision to make an adequate showing of interest, if necessary. Should the Union not wish to proceed to an election in the broader unit, it will be permitted, upon request, to withdraw its petition without prejudice.

DIRECTION OF ELECTION

An Election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by **INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 24, AFL-CIO**

LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.,* 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Co.,* 394

U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility,* 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. The request must be received by the Board in Washington by**, NOVEMBER 6, 2001.**

Dated: October 23, 2001
At Baltimore, Maryland

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Regional Director, Region 5

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